

that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(f) With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made; provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at <http://www.eda.gov>) for guidelines on obtaining approval for incidental use of Property under this section.

EFFECTIVE DATE NOTE: At 79 FR 76136, Dec. 19, 2014, § 314.3 was amended by revising paragraphs (a), (b), and (c), effective Jan. 20, 2015. For the convenience of the user, the revised text is set forth as follows:

#### § 314.3 Authorized Use of Property.

(a) During the Estimated Useful Life of the Project, the Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is

consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including nondiscrimination and environmental compliance.

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#### § 314.4 Unauthorized Use of Property.

(a) Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's interest in certain Property), or as otherwise authorized by EDA, the Federal government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved in whole or in part with Investment Assistance is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the requirements at 15 CFR parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply.

(b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance may not be used:

(1) In violation of the nondiscrimination requirements of § 302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or

(2) For any purpose prohibited by applicable law.

(c) Where the Disposition, encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§ 302.3 and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use or Disposition of the Property.

## § 314.5

EFFECTIVE DATE NOTE: At 79 FR 76137, Dec. 19, 2014, § 314.4(c) was revised, effective Jan. 20, 2015. For the convenience of the user, the revised text is set forth as follows:

### § 314.4 Unauthorized Use of Property.

(c) Where the Disposition, encumbrance or use of any Property violates paragraph (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§ 302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use or Disposition of the Property.

### § 314.5 Federal Share.

(a) For purposes of this part, “*Federal Share*” means that portion of the current fair market value of any Property attributable to EDA’s participation in the Project. The Federal Share shall be the current fair market value of the Property after deducting:

(1) Reasonable repair expenses, if any, incurred to put the Property into marketable condition; and

(2) Sales, commission and marketing costs.

(b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (i.e., fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (i.e., fifty (50) percent of (\$250 – \$10)).

[73 FR 62870, Oct. 22, 2008]

EFFECTIVE DATE NOTE: At 79 FR 76137, Dec. 19, 2014, § 314.5 was amended by revising paragraph (b), effective Jan. 20, 2015. For the con-

## 13 CFR Ch. III (1–15 Edition)

venience of the user, the revised text is set forth as follows:

### § 314.5 Federal Share.

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(b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA’s participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is 50 percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (i.e., 50 percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (i.e., 50 percent of (\$250 – \$10)).

### § 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered, except to secure a grant or loan made by a Federal Agency or State agency or other public body participating in the same Project.

(b) *Exceptions.* Subject to EDA’s approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) Recipient-owned Property that is subject to an encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met;

(2) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities; and

(3) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for